IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Application No.2913 of 2007
In
Writ Petition No.5350 of 2007

Nirottama Purushottam Deore. .. .. Applicant
v/s.
1. State of Maharashtra & ors. .. .. Respondents

Mr.R.K. Mendadkar for applicant.
Mr.V.A. Gangal with Mrs.M.P.Thakur, AGP for respondent Nos.1, 2 & 4.
Mrs.Anamika Malhotra for respondent No.7.

CORAM : SMT.RANJANA DESAI &
SMT.ROSHAN DALVI, JJ.
Dated : 11th December 2007

P.C. :

1. Applicant, who is the original petitioner, has filed the instant writ petition challenging the order dated 6th June 2007 passed by the 2nd respondent- Scheduled Tribe Caste Certificate Scrutiny Committee ("Scrutiny Committee" for short). We may quote prayers made in the writ petition because the prayers have some relevance. The prayers read thus:-

" (a) Rule be issued and the records and proceedings be called for.

(b) That this Hon'ble Court be pleased to issue Writ of Certiorari and/or any order or direction in the nature of Certiorari quashing and setting aside the impugned order dated 6th June, 2007 passed by the Respondent No.2, Committee, Exhibit "A" with further direction to the said Committee to issue Caste Validity Certificate in favour of the petitioner in respect of caste certificate dated 21.3.2003 issued by the Sub Division Officer, Malegaon Sub Division, District Nashik.

(c) that this Hon'ble Court be pleased to hold and declare that the caste certificate dated 21.3.2003 issued by the Competent Authority of jurisdiction that is Sub Divisional Officer, Malegaon Sub Division, District Nashik in favour of the petitioner, is valid, legal and subsisting;

(d) pending the hearing and final disposal of this Writ Petition, execution, implementation, operation and effect of the impugned order dated 6th June, 2007 passed by the Respondent No.2, Committee Exhibit "A" to the petition, be kindly ordered to be stayed;

(e) pending hearing and final disposal of this petition, the respondent no. 3 and 4 acting through themselves, or through their officers, servants, agents and subordinates be directed not to fill up the post of petitioner;

(f) ad-interim/interim relief in terms of prayer clauses (d) and (e) of the petition be granted."

2. The petitioner claims to belong to Thakur tribe, which is

recognised as a Scheduled Tribe in the State of Maharashtra. It appears that the petitioner was granted caste certificate stating that he belongs to Thakur, Scheduled Tribe by the competent authority on 21.3.2003. She applied to the Scrutiny Committee for verification of her caste certificate. Thereafter she contested election from ward No.12, Dabhadi on a seat reserved for Scheduled Tribes. Election was held on 11th March 2007. It is stated in the petition that the petitioner was allowed to contest the said election on production of acknowledgment from the Scrutiny Committee stating that it had received various documents for verification of her caste certificate. The petitioner was declared elected.

3. Thereafter, by the impugned detailed and reasoned order, the Scrutiny Committee held that the petitioner has not been able to succeed in the affinity test and has not been able to establish the ethnic linkage towards the Thakur, Scheduled Tribe community. The Scrutiny Committee observed that claim of the petitioner, therefore, cannot be sustained. The

caste certificate issued in her favour by the Sub Divisional Officer, Malegaon, was thus cancelled and confiscated. As stated hereinabove, the said order is challenged in the instant writ petition.

4. On this writ petition, Rule was issued by this court on 23rd July 2007. Rule was made returnable after 12 weeks. It is pertinent to note that no prayer was made at that stage for any kind of interim relief.

5. In the present civil application, the applicant-petitioner has, inter alia, prayed that this court should direct respondent Nos.3 to 5 i.e. Zilla Prashad, Nashik, Collector, Nashik and State Election Commissioner not to take any adverse action against her on the ground that her caste certificate has been invalidated till final hearing and disposal of the instant writ petition.

6. We have heard Mr.Mendandkar, learned counsel appearing for the applicant. He strenuously contended that the impugned judgment and order is perverse and deserves to be set aside. He submitted that the applicant has a fair chance

of success. He further submitted that several of the applicant's paternal relatives have been declared by the Scrutiny Committee as belonging to Thakur Tribe and this important fact was overlooked by the Scrutiny Committee. He, therefore, submitted that interim order, as prayed for in the civil application, be granted.

7. Mr.Gangal, learned counsel appearing for respondent Nos.1, 2 and 4 and Mrs.Malhotra, learned counsel appearing for respondent No.7 have opposed the grant of civil application. They have heavily relied upon Section 12A of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 ("the said Act" for short). Section 12A of the said Act reads as under:-

> " 12A. Every person desirous of contesting election to a seat reserved for Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of Citizens, shall be required to submit, alongwith the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

Provided that, a person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination paper but who has not received the Validity Certificate on the date of filing of the nomination paper shall submit, alongwith the nomination papers,-

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof for having made such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit, within a period of three months from the date of his election, the Validity Certificate issued by the Scrutiny Committee:

Provided further that, if the person fails to produce the Validity Certificate within a period of three months from the date of his election, his election shall be deemed to have been terminated retrospectively and he shall disqualified for being a member."

8. A bare reading of this section makes it clear that a person who has applied to the Scrutiny Committee for verification of his caste certificate before the date of filing of the nomination paper but who has not received the validity certificate on the date of filing of the nomination paper has to submit along with the nomination paper a true copy of the application

preferred by him to the Scrutiny Committee and undertaking that he shall submit within a period of three months from the date of his election validity certificate issued by the Scrutiny Committee. Proviso states that if the said person fails to produce the validity certificate within a period of three months from the date of his election, his election shall be deemed to have been terminated and he shall be disqualified for being a member. We are informed that the period of three months has now been extended to four months.

9. In this case, the applicant's caste certificate itself has been invalidated by the Scrutiny Committee. Therefore, he is disqualified from being a member. The moment applicant's caste certificate is cancelled by the Scrutiny Committee, section 12A must come into operation. The applicant, therefore, cannot continue to function as a member of the Zilla Parishad. The prayers made by the applicant in the civil application, therefore, cannot be granted. Law must take its own course.

10. We feel it appropriate to give liberty to the applicant/petitioner to approach this court for appropriate orders, if steps are taken for filling up the post. We are informed that this writ petition was on the final hearing board. However, because this civil application was filed, it was removed from the board. We direct the office to add this writ petition to the final hearing board at appropriate place.

11. In the circumstances, the civil application is rejected.

(SMT.RANJANA DESAI, J.)

(SMT.ROSHAN DALVI, J.)